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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/579,137	05/30/2000	Teruo Okada	192523US2	1270
22850	7590	07/29/2005	EXAMINER	
OBLON, SPIVAK, MCCLELLAND, MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314			PERSINO, RAYMOND B	
			ART UNIT	PAPER NUMBER
			2682	

DATE MAILED: 07/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action Before the Filing of an Appeal Brief	Application No. 09/579,137	Applicant(s) OKADA ET AL.	
	Examiner Raymond B. Persino	Art Unit 2682	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 20 May 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 6 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

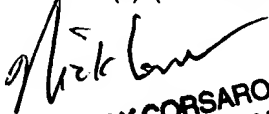
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: 3, 10 and 14.
Claim(s) rejected: 1, 2, 4-9, 11-13 and 15-19.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: see the attached examiner's comments.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.
13. ☐ Other: _____.


NICK CORSARO
PRIMARY EXAMINER

Raymond B. Persino
Examiner
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Continuation of 3. NOTE: The proposed amendment of claim 1, by incorporating the subject matter of claim 2, is not allowable due to the arguments not being persuasive. Furthermore, the amendment of claim 1 is not being entered because it raises new issues in that the subject matter of the "remote control unit configured to transmit the control signal via radio" would have to, for the first time, be considered with the subject matter of claims 4-19. Thus, the proposed amendment of claim 1 would require further consideration as it pertains to claims 4-19. It is noted however that the arguments geared toward proposed claim 1 will be treated as a request for reconsideration of claims 1 and 2. Lastly, newly proposed claim 24 adds the new issue of "the remote control unit configured to transmit the control signal....via infrared" that was not previously found in the claims.

EXAMINER'S COMMENTS

Response to Arguments

1. Applicant's arguments filed 5/20/2005 have been fully considered but they are not persuasive.

The applicant first argues that since BUSH is explicitly without a remote control there is no teaching, suggestion, or motivation, explicitly or implicitly, in either reference to combine BUSH with VOGEL and therefore the examiner must have used impermissible hindsight reasoning. The examiner disagrees with the applicant's statement regarding a lack of teaching and motivation. VOGEL clearly teaches the remote control that is not disclosed by BUSH. Moreover, motivation has been provided for the combination by the examiner in the rejection. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

The applicant next argues that VOGEL does not teach that the remote control has a plurality of operation buttons, each operation button configured to implement a corresponding one of a plurality of operation modes for audio reproduction, the plurality

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of operation modes comprising a start reproducing audio information mode, a stop reproducing audio information mode, a reversing mode and a fast forwarding mode. However, the examiner has already admitted to this in the rejection and used the Operating Instructions for the Sony CDP-X77ES as a teaching for the subject matter.

The applicant further argues that VOGEL teaches away from the applicant's claimed invention because VOGAL aims to reduce the number of buttons on the remote whereas the applicant claims that each operating button corresponds to one of the plurality of operation modes. However, VOGAL's teaching to reduce the number of buttons is merely a preferred embodiment of his teaching and therefor his teaching may operate without that aspect of this teaching in place. Therefore, VOGAL aims to reduce the number of buttons on the remote does not teach away from the applicant's claimed invention.

In response to applicant's argument that VOGEL and the Operating Instructions for the Sony CDP-X77ES are nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, both VOGEL and the Operating Instructions for the Sony CDP-X77ES are geared toward portable audio devices that use remote controls.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by

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combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the examiner has provided motivation and refers applicant to the rejection.

Lastly, the applicant has now traversed the official notice taken for the subject matter of claim 2. However, the applicant's traversal is inadequate because it is not timely. The official notice was taken in the non-final office action mailed 3/26/2004. A timely traversal would have been in response to that office action. Thus, the subject matter for which official notice was taken is already admitted to being prior art because the applicant failed to earlier traverse the examiner's assertion of official notice.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Raymond B. Persino whose telephone number is (571) 272-7856. The examiner can normally be reached on Monday-Thursday from 8:00 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vivian C. Chin can be reached on (571) 272-7848. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Raymond B. Persino *RP*
Examiner
Art Unit 2682
